

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310. (This is a GIL).

January 3, 2000

Dear Xxxxx:

This letter is in response to your letter dated November 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are requesting a Private Letter Ruling for a number of items that we sell at all our retail outlets in the state of Illinois. The required information for a 'Private Letter Ruling' as outlined in Section 1200.110 of the Illinois Administrative Code, is included herein.

- 1) We are a grocery store company, doing business in Illinois under the name of COMPANY. We sell grocery items, produce, beverages, over-the-counter medicines and general merchandise. As a retailer in the state of Illinois, we collect sales tax from our customers on all taxable transactions. There are several items that we sell at our outlets that are not specifically addressed in the Illinois sales and use tax statutes or regulations, and therefore, we are seeking verification that the following items should be taxed at the low rate.
  - a) Mentholatum Deep Heating Lotion
  - b) Anbelsol - Baby Teething Lotion
  - c) Mentholatum Pain Relieving Patch
  - d) Vicks VapoRub
  - e) Epsom Salt - Saline Laxative
  - f) Chapstick - Lip Balm (Regular)
  - g) Carmex - Cold Sore Reliever and Lip Moisturizer, Jar
  - h) Carmex - Cold Sore Reliever and Lip Moisturizer, Tube
  - i) Listerine - Antiseptic Mouthwash
  - j) Efferdent - Anti-Bacterial Denture Cleaner
  - k) Sominex - Sleeping Aid
  - l) Non-carbonated flavored water
  - m) Martinelli Sparkling Apple Juice
  - n) Food producing plants

o) Food producing seeds

Items a) - k) above involve 'over-the-counter' medicines that we believe should be taxed at the low rate of tax in accordance with Section 130.310(c)(1) of the Illinois Administrative Code, because each applicable manufacturer makes claims or at the very least alludes to some form of medicinal qualities on each of the product labels. Item l) involves non-carbonated flavored water, which we believe should also be taxed at a low rate of tax because according to Section 130.310(b)(1) & (5) of the Illinois Administrative Code, 'non-carbonated water' is not included in the definition of soft drinks. This water product in question is marketed as a Flavored Water and does not contain any carbonation, and therefore, should be included in the same category as 'non-carbonated water'. Item m) involves a 'carbonated beverage' containing 100% juice. It is our belief that according to Section 130.310(b)(1) & (5), this beverage should be taxed at the low rate because it contains at least 50% juice percentage. The fact that the beverage contains carbonation has no bearing on whether it should be taxed at the high rate or low rate of tax. Items n) and o) above, are items that produce food that is intended for human consumption. It is our belief that in accordance with Section 130.310(c)(1) of the Illinois Administrative Code, food producing plants and seeds should also be taxed at the low rate of tax because the fruits or vegetables that they produce are intended solely for human consumption.

2. Please find enclosed a copy of a label for each of the items listed above with the exception of the 'food producing plant'. Please note that the medicinal claims on the labels associated with items a) - k) are highlighted in yellow. It's our opinion that relative to items a) - h) above, each of the manufacturers purport on their labels to have medicinal qualities because they claim that the use of their product will **'heal'** or provide **'relief'** to the user. With respect to item i) the manufacturer claims that when the user uses their product, the bacteria that causes denture odor **'will be killed'**. Item j) the manufacturer claims that Listerine Antiseptic Mouthwash **'kills germs on contact and reduces plaque and gingivitis'**. And finally, with respect to item k), the manufacturer purports that the use of the product **'helps to reduce difficulty falling asleep'**.

3) The time frame of this 'Private Letter Ruling' request relates to September 1, 1999 forward. At the present time, COMPANY is not under audit with the state of Illinois for the period listed above nor is there any pending litigation between COMPANY and the Department of Revenue, relative to the items listed above or the time period requested.

- 4) To the best of our knowledge, we have never requested or received a previous ruling relating to these fifteen items that are the subject of this current 'Private Letter Ruling' request.
- 5) Statement of supporting authority is included in 1) & 2) above.
- 6) To the best of our knowledge, there is no authority contrary to our views or opinions, as it relates to the fifteen items in question.
- 7) In accordance with the instructions provided in Section 1200.110 b)(7) of the Illinois Administrative Code, we have determined that there is no trade secret information that will need to be deleted from a publicly disseminated version of the private letter ruling.

We appreciate your help in providing us the necessary direction as it relates to the items in question. We allocate a tremendous amount of resources to ensure compliance with the Illinois sales tax statutes and regulations, so your attention to this matter is of the utmost importance. If we can be of any additional assistance that will ensure a timely reponse to this private letter ruling request, please let's us know. Thank you for your help.

We are unable to grant you a Private Letter Ruling because of pending litigation between your company and the Department. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

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As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus

applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

With the above provisions in mind, the following is a discussion of the items listed in your letter. Pain relieving lotions, such as Mentholatum Deep Heating Lotion, Anbelsol Baby Teething Lotion, Mentholatum Pain Relieving Patch and Vicks VapoRub have medicinal qualities and make those claims on their labels. These products qualify for the low rate of tax.

Soaps and other chemicals, such as Epsom Salt, may qualify for the low rate if they are intended by the manufacturer for human use and purport on the label to have medicinal qualities. The Epsom Salt package indicates that it can be used for internal use as a laxative. Laxatives are taxable at the low rate as medicines. Therefore, the Epsom Salt qualifies for the low rate of tax.

In regards to lip balms, whether a lip balm is taxable depends upon the claim made on the label. If the label indicates that the balm is only to restore moisture or contains aloe vera, the lip balm would be taxable at the high rate of tax. However, to the extent that the label asserts a medicinal quality, such as the healing nature of the product, the lip balm would be subject to the low rate of tax. The ChapStick Lipbalm states that it "[h]elps healing and prevention of dry, chapped, sun and windburned lips." Therefore it makes a medicinal claim on its label qualifying it for the low rate of tax. Likewise, both types of Carmex Cold Sore Relievers claim to relieve cold sores and dry chapped lips. Therefore they also make medicinal claims on their labels qualifying them for the low rate of tax.

Regarding the mouthwash, our experience has been that most mouthwashes do not make a medical claim on the label and consequently are subject to the full rate of tax. We do not believe that claims for a product which include "mouth refreshment, fighting strong mouth odors, breath control, freshens your breath, or daily oral care" qualify as medical claims. However, we do consider statements such as "kills mouth germs, or removes plaque bacteria" to be medicinal claims. The Listerine package details you provided states that the product is "CLINICALLY PROVEN. Kills Germs by Millions on Contact." This language constitutes a medicinal claim. Therefore the Listerine will qualify for the low rate of tax. Similarly, the Efferdent claims that it will [k]ill the bacteria that cause denture odor." This language constitutes a medicinal claim. Therefore the Efferdent will qualify for the low rate of tax. Sleep aids such as Sominex qualify as drugs that are subject to the low rate of tax.

From the information you provided, it appears that the Wildberry geyser spring water, described as "non-carbonated flavored water," is a soft drink that

should be taxed at the high rate. Whereas the Martinelli sparkling 100% juices are not considered soft drinks and are therefore subject to the low rate of tax.

The reduced State rate is applicable only to sales of food. Accordingly, sales of seeds, seedlings, set plants or even mature plants do not qualify for the reduced State rate. This is true even though the seed, seedling or set plant has the potential for producing food and even though a mature plant may be in the process of producing food. Edible herbs would qualify for the reduced State rate so long as they are sold as food for human consumption off the selling premises. Herbs sold in a planted set would not qualify for the exemption. For example, cut parsley could qualify for the reduced State rate. A parsley plant could not.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

MAJ:msk  
Enc.